

# EXHIBIT 7

OK Health Care Authority (Nancy Nesser)

December 12, 2008

Oklahoma City, OK

Page 1

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X

In Re: PHARMACEUTICAL INDUSTRY ) MDL No. 1456  
AVERAGE WHOLESALE PRICE LITIGATION ) Master File No.  
-----) 01-CV-12257-PBS

THIS DOCUMENT RELATES TO: )  
United States of America ex rel. ) Hon. Patti B.  
Ven-A-Care of the Florida Keys, ) Saris  
Inc., et al., v. Dey, Inc., et al., )  
Civil Action No. 05-11084-PBS; )  
and United States of America ex ) DEPOSITION OF  
rel. Ven-A-Care of the Florida ) THE OKLAHOMA  
Keys, Inc., et al., v. Boehringer ) HEALTH CARE  
Ingelheim Corp., et al., Civil ) AUTHORITY  
Action No. 07-10248-PBS; ) by NANCY  
and United States ex rel. Ven-A-Care) NESSER  
of the Florida Keys v. Abbott )  
Laboratories, Inc., Civil Action ) DECEMBER 12,  
Nos. 06-CV-11337 and 07-CV-11618 ) 2008  
-----X

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

## Oklahoma City, OK

<p style="text-align: right;">Page 222</p> <p>1 Q. Does Oklahoma Medicaid use a point-of-</p> <p>2 sale system?</p> <p>3 A. You mean to pay the claims?</p> <p>4 Q. Uh-huh.</p> <p>5 A. Yes.</p> <p>6 Q. AWP is not defined in Oklahoma</p> <p>7 regulations, is it?</p> <p>8 A. I don't think it's specifically</p> <p>9 defined. It's referred to.</p> <p>10 Q. AWP is not defined in Oklahoma</p> <p>11 statutes, is it?</p> <p>12 A. Oh, not in Oklahoma statutes, I don't</p> <p>13 believe so, no.</p> <p>14 Q. Oklahoma could have defined AWP as</p> <p>15 actual acquisition costs, if it had wanted to;</p> <p>16 correct?</p> <p>17 A. I suppose so.</p> <p>18 Q. When Oklahoma makes decisions regarding</p> <p>19 reimbursement methodology for prescription drugs,</p> <p>20 it draws upon various sources of information that</p> <p>21 are available to it; correct?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 224</p> <p>1 adopted is a decision that the state makes;</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. For instance, Oklahoma Medicaid chooses</p> <p>5 for itself whether to reimburse providers based</p> <p>6 on AWP minus a discount; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Oklahoma Medicaid is not required to</p> <p>9 use AWP as a bench mark in its reimbursement</p> <p>10 formula?</p> <p>11 A. That's correct.</p> <p>12 Q. Oklahoma Medicaid could choose to</p> <p>13 reimburse providers based on WAC, if it wanted</p> <p>14 to; correct?</p> <p>15 A. Correct.</p> <p>16 Q. Oklahoma Medicaid could choose to</p> <p>17 reimburse providers based on an actual</p> <p>18 acquisition cost, if it wanted to; correct?</p> <p>19 A. Correct.</p> <p>20 Q. There are several constituencies</p> <p>21 outside of the Medicaid agency that have strong</p> <p>22 interests in what decisions are made within the</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. The OIG reports we discussed are one of</p> <p>2 the sources of information?</p> <p>3 A. Yes.</p> <p>4 Q. And surveys or reports conducted at the</p> <p>5 direction of Oklahoma Medicaid would be other</p> <p>6 sources of information that were considered?</p> <p>7 A. Yes.</p> <p>8 Q. Myers &amp; Stauffer's report prepared at</p> <p>9 Oklahoma Medicaid's discretion would be another</p> <p>10 source of information it could consider?</p> <p>11 A. You mean, if we hired them or -- you</p> <p>12 mean, in the past?</p> <p>13 Q. In the past when Oklahoma Medicaid did</p> <p>14 hire Myers &amp; Stauffer.</p> <p>15 A. Sure.</p> <p>16 Q. And when Oklahoma Medicaid makes</p> <p>17 decision regarding its prescription drug payment</p> <p>18 rates and dispensing fees, it also draws upon the</p> <p>19 expertise of the people working for the state;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Ultimately the payment rate that is</p>	<p style="text-align: right;">Page 225</p> <p>1 agency about prescription drugs; correct?</p> <p>2 A. Correct.</p> <p>3 Q. In the case of Oklahoma Medicaid, some</p> <p>4 of those constituency groups are providers;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And that includes pharmacists; correct?</p> <p>8 A. Correct.</p> <p>9 Q. Does Oklahoma consult with any pharmacy</p> <p>10 associations in general when setting policies or</p> <p>11 rates for reimbursement of prescription drugs?</p> <p>12 A. Yes.</p> <p>13 Q. Which pharmacy associations?</p> <p>14 A. We consult with the Oklahoma</p> <p>15 Pharmacists Association, and there's another</p> <p>16 group called Pharmacy Providers of Oklahoma.</p> <p>17 Q. And how does Oklahoma consult with the</p> <p>18 Oklahoma Pharmacists Association and Pharmacy</p> <p>19 Providers of Oklahoma?</p> <p>20 A. We usually have a meeting with them, a</p> <p>21 face-to-face.</p> <p>22 Q. And what's discussed at those meetings</p>

57 (Pages 222 to 225)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

## Oklahoma City, OK

Page 54

1 just thinking about acquisition.

2 Q. Okay. When did you first become aware  
3 of the difference between AWP and actual  
4 acquisition costs for generic drugs?

5 A. That probably would have been later  
6 than that. I mean, not all the way to '99, but  
7 maybe '95, '96, somewhere in there.

8 Q. And in '95, '96 what was your  
9 understanding of the difference between AWP and  
10 actual acquisition costs for generic drugs?

11 A. That sometimes there was a wide  
12 difference. Not always.

13 Q. Can you describe what you mean by "wide  
14 difference"?

15 A. Just that it was -- it was variable.  
16 It wasn't a standard. It wasn't, like, with the  
17 brand name where you could -- you can see it's  
18 consistent. If you pulled two manufacturers  
19 brand-name products off the shelf, the markup is  
20 going to be about the same. If you pulled two --  
21 even of the same generic drug, the -- there's no  
22 consistency between the AWP and the acquisition.

Page 55

1 Q. So is it your understanding that there  
2 was no particular formula or specified markup  
3 between AWP and actual acquisition costs for  
4 generic drugs starting in, you know, around 1995?

5 A. That would -- that would be a fair  
6 statement, yes.

7 Q. Okay. You mentioned earlier that -- at  
8 least with reference to the brand drugs, you  
9 might, in purchasing drugs, consider the gap  
10 between the AWP and the actual acquisition cost.  
11 Did you choose who to buy your prescription drugs  
12 from based on that spread between AWP and actual  
13 acquisition costs?

14 A. Not typically. You know, there were a  
15 few products where -- for example, I'm not going  
16 to be able to -- Prinivil and Zestril were both  
17 Lisinopril made by two different companies. But  
18 they typically were priced almost to the penny  
19 the same.

20 So when there were brand drugs where  
21 you had two manufacturers, they seemed like they  
22 would just price them pretty close. So there's

Page 56

1 no benefit to getting one over the other.

2 Q. While you were working at any of the  
3 pharmacies prior to working for Oklahoma  
4 Medicaid, were you aware of anyone marketing the  
5 spread?

6 A. I think I -- I remember being sort of  
7 told, not exactly, but -- that was pointed out to  
8 me. Not by a sales person, but by my boss.

9 Q. Okay. And what was pointed out to you  
10 by your boss, exactly?

11 A. Just that -- just that -- that certain  
12 -- certain generics had this lower price and that  
13 we've got paid -- not necessarily based on AWP,  
14 but we would get paid based on a maximum  
15 allowable cost. And so you -- you wanted to find  
16 the least expensive one because payors were  
17 starting to put in maximum allowable cost  
18 programs. And so you wanted to make sure you  
19 were getting the best deal.

20 Q. Was it ever discussed, not just in  
21 relation to maximum allowable costs, but in  
22 relation to the difference between the price at

Page 57

1 which you could acquire drugs and the AWP-based  
2 reimbursement?

3 A. I don't remember that specifically.

4 Q. Okay. I would like to start with a  
5 picture of how the Medicaid program works in  
6 Oklahoma.

7 A. Okay.

8 Q. And in the federal government.  
9 Medicaid in generally is partnership between the  
10 federal government and the state governments;  
11 correct?

12 A. Correct.

13 Q. Are you familiar with the term federal  
14 matching assistance percentage?

15 A. Yes.

16 Q. What is federal matching assistance  
17 percentage?

18 A. That is the amount that the federal  
19 government contributes to a state's Medicaid  
20 program.

21 Q. Essentially the federal government pays  
22 a part of Oklahoma's expenditures under its

15 (Pages 54 to 57)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com